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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Contracting Agency Policy Memorandum P006: Application of Army Regulation (AR) 210-25, Vendor Facility Program for the Blind on Federal Property - Randolph-Shepard Act (R-S Act)

This policy memorandum applies to solicitation and award of Army Contracting Agency (ACA) contracts using the requirements of AR 210-25, Vending Facility Program for the Blind on Federal Property-Randolph-Shepard Act (20 U.S.C. 107). AR 210-25 was revised on June 14, 2004. Changes were accomplished to this revision on June 30, 2004.

The Enclosure provides an overview of the Act and preferences and procedures to be followed when acquiring vendor services to handle or participate in the preparation of food, the ordering of food/supplies, or the overall management of a dining facility.

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Enclosure

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Army Contracting Agency Randolph-Sheppard Act Policy

1. Randolph-Sheppard Act (RSA) Overview.

The RSA is a Federal law that establishes a preference in favor of firms, operated by blind persons, for various vending services on Federal installations operated by executive branch agencies. Originally enacted in 1936, the RSA "provides blind persons with remunerative employment, enlarges the economic opportunities of the blind, and stimulates the blind to greater efforts in striving to make themselves self-supporting." The law is published in Title 10 of the U.S. Code, Secs. 107-107e. A 1974 amendment applied the RSA to "cafeterias."

2. RSA Implementation.

Military dining facilities are covered by the RSA. The RSA designates the Department of Education (DE) as the proponent for publishing regulations and administratively resolving issues and disputes among other agencies concerning the RSA. The DE has published RSA regulations in Sec. 395 of Title 34 of the Code of Federal Regulations (CFR). The DE has statutory authority to finally decide certain RSA disputes, and may do so through mandatory arbitration. DoD guidance is published in DODD 1125.3, Vending Facility Program for the Blind on Federal Property, 22 August 1991. Army guidance is published in AR 210-25, Vending Facility Program for the Blind on Federal Property, 30 June 2004.

3. RSA Preference Applicability.

The RSA preference covers only dining facility (DF) "operation." Not every function within or related to a DF, that may be acquired through a commercial contract, is subject to the RSA preference. A contract that simply engages a firm to come in once per month to buff and wax the floors, or once a year to paint the walls, is not subject to the RSA. Likewise, table bussing/clean-up and dishwashing services (otherwise known as "dining facility attendant" (DFA) services) may be procured using normal contracting procedures in a separate contract action. As a general rule, contracts calling for the vendor to handle or participate in the preparation of food, the ordering of food/supplies, or the overall management of the DF will be subject to the RSA (otherwise known as "full food services" (FFS)).

By a memorandum dated 20 November 2001, the Acting Assistant Secretary of the Army (Acquisition, Logistics & Technology) (ASAALT) directed that RSA coverage be determined by the "predominant character of the procurement." Under this approach, DF procurements were to be analyzed to derive the percentages of each requirement attributable to FFS versus DFA or other services. Thus, if the FFS component was deemed to constitute less than 50% of the total DF requirement, the RSA preference would not apply; conversely, if FFS equaled or exceeded 50% of the requirement, the RSA preference would apply. This method of determining RSA applicability is no longer considered to be legally sufficient.

Instead, if a contract will contain an FFS element, it should be presumed to be subject to the RSA preference. If there is any doubt as to whether the RSA applies to a specific procurement, the contracting officer after consulting with local legal counsel, should consult, through contracting channels, with contracting officer's regional PARC headquarters Operations/Policy Directorate. In the alternative, if the FFS and non-FFS elements of a requirement are discrete

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and readily segregable, there is no objection to conducting separate procurements. In such a case, only the FFS element would be subject to the RSA preference.

4. RSA Procurements.

Statutory Preference

The RSA requires that, "[The DE] ... establish a priority for the operation of cafeterias on Federal property by blind licensees when [the DE] determines, on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of a high quality comparable to that currently provided to employees, whether by contract or otherwise."

State Licensing Agency

Each state government has an organization, known as a "state licensing agency" (SLA) that is designated by the DE Commissioner of the Rehabilitation Services Administration to issue licenses to blind persons for the operation of vending facilities on Federal property. The SLA represents the blind vendor in procurement competitions. Regardless of the size of the blind vendor's business, the SLA is considered to be other than a small business for purposes of applying Small Business Act requirements. 13 C.F.R. § 121.105(a).

Procedures

-- If the RSA preference applies to an appropriated fund procurement, use normal contracting procedures, with the following exceptions:

-- **Solicitation and Competitive Range Determination.**

- * The SLA will be invited to submit a proposal.

- * If the SLA proposal does not have sufficient merit to warrant inclusion within the competitive range, the decision to exclude the SLA from the competitive range will be made by the regional PARC (without power of redelegation). Because of the likelihood that a competitive range exclusion will lead to DE arbitration, PARCs will notify the ACA Headquarters Operations Directorate within three working days of deciding to exclude an SLA from the competitive range in an RSA-covered procurement.

- * If the SLA is included in the competitive range, award will be made to the SLA unless: (1) the on-site official determines that award would adversely affect the interests of the United States, or that the blind vendor does not have the capacity to perform the contract; and (2) the DE Secretary approves. AR 215-25, para. 6b(1)(c).

-- **Award Without Discussions.** An award without discussions in a procurement subject to the RSA preference may be made:

- * if the solicitation includes notice that award may be made without discussions;
- * if after evaluation of proposals, award without discussions is deemed appropriate;
- * if award without discussions would be to an offeror other than the SLA; and

* if the regional PARC (without power of redelegation) approves the decision to award without discussions.

The rationale for any decision to award without discussions must be clearly articulated in writing at the time of decision. Because of the likelihood that award without discussions under these circumstances will lead to DE arbitration, PARCs will notify the ACA Headquarters Operations Directorate within three working days of deciding to award without discussions to other than the SLA.

-- Direct Negotiations. In RSA-covered procurements, when the SLA is capable of providing the required services at a reasonable cost, with food of high quality comparable to that available from other food services providers, the government may elect to enter into direct negotiations with the SLA. AR 210-25, paragraph 6c(2) commits the decision to conduct direct negotiations to the "on-site official," which is typically the garrison commander. Although the decision is not the contracting officer's, direct negotiations are rarely warranted in the government's business interest. Contracting officers should normally advise on-site officials against direct negotiations. If the contracting officer believes that direct negotiations are clearly in the government's interest, the contracting officer may so advise the onsite official, but only after notifying the ACA Headquarters Operations Directorate, through contracting channels.

5. RSA Preference Interaction With Other Preference Programs.

When two or more statutory preferences apply to a particular procurement, the more specific preference takes precedence over one that is general in nature. The RSA establishes a very specific and narrowly focused preference because it is targeted at cafeteria and vending operations; thus, the RSA preference most often takes precedence. However, the array of preference programs and the order of precedence among them are complex and variable. Contracting officers should therefore consult with legal and small business specialists early in the acquisition cycle for FFS requirements to determine which socio-economic programs pertain to their procurements.